



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193
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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DIGITAL LOUDOUN 3, LLC
FOR
THE DIGITAL LOUDOUN 3 ASHBURN FACILITY
Registration No. 74126**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Digital Loudoun 3 LLC, regarding the Digital Loudoun 3 Ashburn Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Digital Loudoun" means Digital Loudoun 3, LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Digital Loudoun 3, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Digital Loudoun Parkway 3, LLC Facility, located at 44274 Roundtable Plaza in Ashburn, Virginia (a.k.a. Digital Loudoun 3).
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means a minor New Source Review permit to modify and operate a data center which was issued under the Virginia Air Pollution Control Law and the Regulations to Digital Loudoun 3, LLC on January 18, 2018.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Digital Loudoun owns and maintains the emergency generators located at the Facility in Ashburn, Virginia located in Loudoun County. The Facility is a data center with emergency generators. The Facility is the subject of the Permit which allows Digital Loudoun to construct and operate diesel engine-generator sets at the Facility.
2. On March 15, 2018, Department staff received a letter from Digital Loudoun that contained an emergency generator list and stack test protocol for the Digital Loudoun 3 Facility. Based on a review of this documentation, DEQ staff observed the following:

- a. Eight, 3,000 kilowatt engine-generator sets and one 600 kilowatt engine-generator had been installed at the Facility prior to the issuance of the January 18, 2018 permit.
 - b. Notification for construction (installation), anticipated and actual manufacturer's trial dates and anticipated start-up and actual start-up dates were not submitted pursuant to the required time frame specified in the Permit.
3. 9 VAC 5-80-1120.A states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.
4. Permit Condition 16 states Initial Notifications- The permittee shall furnish written notification to the Regional Air Compliance Manager of the DEQ's NRO of:
 - a. The actual date on which construction of each emergency diesel engine-generator sets (Ref. No. 3.0-1 through 3.0-24 and Ref. No. PBB1 through PBB5) commenced within thirty (30) days after such date. Along with this notification, the information below shall be included: i. Name and address of the permittee; ii. The address of the affected source; iii. Engine information, including make, model, engine family, serial number, model, year, maximum engine power and engine displacement; and iv. Fuel used.
 - b. The anticipated date of the manufacturer's trials of the emergency diesel engine-generator sets (Ref. No. 3.0-1 through 3.0-24 and Ref. No. PBB1 through PBB5) postmarked not more than thirty (30) days nor less than fifteen (15) days prior to such date.
 - c. The actual date on which the manufacturer's trials of the emergency diesel engine-generator sets (Ref. No. 3.0-1 through 3.0-24 and Ref. No. PBB1 through PBB5) occurs within fifteen (15) days after such date.
 - d. The anticipated start-up date of each emergency diesel engine-generator sets (Ref. No. 3.0-1 through 3.0-24 and Ref. No. PBB1 through PBB5) postmarked not more than sixty (60) days nor less than thirty (30) days prior to such date.
 - e. The actual start-up date of each emergency diesel engine-generator sets (Ref. No. 3.0-1 through 3.0-24 and Ref. No. PBB1 through PBB5) within fifteen (15) days after such date. The actual start-up date for each emergency diesel engine-generator sets shall be the date on which each engine completes manufacturer's trials, but shall be no later than thirty (30) days after the initial start-up for manufacturer's trials.

5. On April 16, 2018, based on the information received from Digital Loudoun on March 15, 2018, the Department issued Notice of Violation No. ANRO000892 to Digital Loudoun 3, LLC for the violations described in paragraphs C(2) through C(4) above.
6. Based on DEQ staff's review of information received from Digital Loudoun on March 15, 2018, the Board concludes that Digital Loudoun 3, LLC has violated 9 VAC 5-80-1120.A, and Permit Condition 16 as described in paragraphs C(2) through C(4), above.
7. DEQ issued a Permit to Digital Loudoun for the aforementioned engine-generator sets on January 18, 2018.
8. Digital Loudoun petitioned the Regional Air Compliance Manager to request a variance from Permit Condition 6 on May 10, 2019, which prohibits the operation of diesel engine generator sets during ozone season between 7am and 5pm, to be able to conduct one-time commissioning, unplanned maintenance, manufacturer recall updates, or repairs during the prohibited time frame. DEQ issued a conditional letter of approval on May 23, 2019. As the result of discussions regarding generator operations during a full compliance evaluation of the Facility conducted by DEQ staff on July 29, 2019, DEQ requested additional information regarding generator operations during the 2019 ozone season. Documentation submitted by Digital Loudoun on August 21, 2019, documents 37 instances where the generators operated for non-commissioning activities between the hours of 7am and 5pm during the 2019 Ozone Season.
9. Permit Condition 6 states Operating Limitations (Ozone Season) - No emergency diesel-engine generator set (Ref. No. 3. 0-1 through 3. 0-70, 3. 0C-1 through 3. 0C-167, PBB600-1 through PBB600-6, PBB300, and PBB500) shall be operated for periodic maintenance, testing or operational training (that involves fuel combustion) during the ozone season (May 1 through September 30) between the hours of 7 a.m. to 5p.m. The permittee may petition the Air Compliance Manager of the DEQ's NRO for exceptions to this requirement, with approvals made on a case-by-case basis.
10. On September 27, 2019, based on the documentation received from Digital Loudoun on August 21, 2019, the Department issued Notice of Violation No. ANRO000892 to Digital Loudoun 3, LLC for the violation described in paragraph C(8) and C(9) above.
11. Based on DEQ staff's review of information received from Digital Loudoun on August 21, 2019, the Board concludes that Digital Loudoun 3, LLC has violated Permit Condition 6 as described in paragraphs C(8) and C(9) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Digital Loudoun 3, LLC, and Digital Loudoun 3, LLC agrees to pay a civil charge of \$317,913.22 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Digital Loudoun 3, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Digital Loudoun 3, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Digital Loudoun 3, LLC for good cause shown by Digital Loudoun 3, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Digital Loudoun 3, LLC admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Digital Loudoun 3, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Digital Loudoun 3, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order, except that Digital Loudoun 3, LLC reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of Digital Loudoun 3, LLC.
6. Failure by Digital Loudoun 3, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Digital Loudoun 3, LLC does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Digital Loudoun 3, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Digital Loudoun 3, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Digital Loudoun 3, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert

will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Digital Loudoun 3, LLC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Digital Loudoun 3, LLC has completed all of the requirements of the Order;
 - b. Digital Loudoun 3, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Digital Loudoun 3, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Digital Loudoun 3, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Digital Loudoun 3, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Digital Loudoun 3, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Digital Loudoun 3, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Digital Loudoun 3, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Digital Loudoun 3, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of May, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Digital Loudoun 3, LLC voluntarily agrees to the issuance of this Order.

Digital Loudoun 3, LLC,
a Delaware limited liability company

By: Digital Realty Trust, L.P.,
its manager

By: Digital Realty Trust, Inc.
its general partner

Date: 5/14/2020 By: [Signature]
John Bean, VP, Associate General Counsel

Commonwealth of Virginia
City/County of RICHMOND

The foregoing document was signed and acknowledged before me this 14TH day of
MAY, 2020, by JOHN BEAN who is
VP, Assoc. General Counsel of Digital Loudoun 3, LLC, on behalf of the company.

[Signature]
Notary Public

145251
Registration No.

My commission expires: June 30, 2020

Notary seal:

